IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.3997 OF 2004

Jagdish Balaram Jadhav ..Petitioner

Vs.

Superintendent, Kalyan District Prison
Classw-I, Kalyan, Dist: Thane & Ors. ..Respondents

Mr.D.S.Sapkale, Adv. for Petitioner

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 17TH FEBRUARY, 2005.

P.C.

. The Petitioner came to be appointed to the post of Guard in Prison by order dated 3rd July, 1992. He joined duties on 10th July, 1992 and his services came to be terminated on 24th June, 1994.

2. He filed an Original Application before Maharashtra Administrative Tribunal being O.A.No.465 of 2002 with Misc. Application No.115 of 2002 as there was delay of 6 years, 10 months and 17 days. Considering the material on record and examining the merits of the matter Maharashtra Administrative Tribunal refused to exercise its discretion in condoning the delay. On merits Maharashtra Administrative Tribunal found that the Petitioner had not acquired the status of deemed confirmation as per Rules and was a temporary employee. Considering that it refused to interfere with the

punishment imposed.

3. It is this order which is the subject matter of the present Petition. On behalf of the Petitioner learned Counsel contends that order of termination amounts to dismissal and as such an enquiry ought to have been conducted. We have perused the translation of the order dated 23rd June, 1994 where by the petitioner's services were terminated. The petitioner as pointed out earlier was working as a Guard in the prison. In the course of his employment it appears that he was involved in several offences and charge were framed against him including under T.A.D.A. and Arms Act. That is so related in the preamble to the order. On that basis his services came to be terminated. In every order of termination on prosecution for unsatisfactory performance during the period of employment, there is bound to be some mentioning or recital of unsatisfactory performance. That by itself cannot amount to stigma. In the instant case the Petitioner even before completion of two years service as Guard in prison was involved in offences. It is true that the Petitioner has been subsequently acquitted. The question really is whether the action of the Respondent in terminating the service and for the reasons set out in the order can be said to cast a stigma, warranting enquiry.

4. Considering the fact that the petitioner was a temporary employee and further considering that there were incidents during the said period it was open to the Appointing Authority to consider his conduct. The Appointing Authority considering his conduct thought it fit not to continue the petitioner in service. To our mind it cannot be said that it casts a stigma warranting attraction of Article 311 of the Constitution of India. We are also not inclined to interfere with the order of the Tribunal refusing to exercise discretion to condone the delay. For the aforesaid reasons we find no merit in the petition. Petition is dismissed. No order as to cost.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)